

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ARY JEWELERS, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 04-10281-EFH
IBJTC BUSINESS CREDIT CORPORATION)	
and DAVID MOLINARIO,)	
)	
Defendants.)	
)	

**DEFENDANT IBJTC BUSINESS CREDIT
CORP.'S OPPOSITION TO PLAINTIFF'S
MOTION TO RE-URGE PLAINTIFF'S
PREVIOUSLY FILED MOTION TO COMPEL**

Plaintiff's motion to compel is the **third time** it has moved since fact discovery closed on **June 15, 2005** concerning a document request which was served and fully responded to more than two years ago. As it did in each of its prior motions, plaintiff claims, incorrectly, that documents were improperly withheld by defendants. The Court denied the prior two motions, and it should deny the current motion as well.¹

Plaintiff's first motion was made on November 4, 2005. *See* Exhibit A. The motion sought to continue consideration of defendants' motion for summary judgment on the grounds that "[d]efendants have totally or intentionally failed to provide requested, pertinent documents to Plaintiff and further, the document production to date is wrongfully non-compliant with the Federal Rules of Civil Procedure." Exhibit A, p. 1. Defendants filed their opposition to

¹ This opposition is filed only on behalf of defendant IBJTC because David Molinario is no longer a defendant, having been voluntarily dismissed by the plaintiff.

plaintiff's motion on November 4, 2005. *See* Exhibit B. On November 7, 2005 the Court denied the motion. *See* Exhibit C.

On November 7, 2005, plaintiff filed a motion to compel concerning the same document request at issue here. *See* Exhibit D. Plaintiff claimed that the defendants made "spurious and baseless" objections. Ex. B, ¶ 4. On November 9, 2005, defendants filed their opposition to plaintiff's motion. *See* Exhibit E. On December 20, 2005, the Court denied the motion to compel. *See* Exhibit F.

In short, both of plaintiff's prior motions addressed the same document request attached to its current motion, and sought the very same relief plaintiff now seeks. Defendant IBJTC hereby incorporates by reference herein the same arguments it made in its oppositions to the two prior motions.

Plaintiff has come forward with no new facts that would justify granting its motion to compel. As IBJTC has previously explained, it has fully and fairly produced all relevant, non-privileged documents in its possession, custody or control. At this late date, with defendant's summary judgment motion decided, and the case scheduled for trial, there is no good cause to reopen fact discovery. Plaintiff's motion should be denied.

Dated: June 1, 2006

ROPES & GRAY LLP

/s/
Christopher R. Dillon (BBO No. 640896)
One International Place
Boston, MA 02110
(617) 951-7000
Attorneys for defendant
IBJTC Business Credit Corp.